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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/878,908	06/19/97	LAUTERJUNG	K 091147005001

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EXAMINER

PREBILIC, P

ART UNIT	PAPER NUMBER
3308	3

DATE MAILED 1/27/98

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on Sept. 15, 1997
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three (3) month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-51 is/are pending in the application.
Of the above, claim(s) 37-46, 50, and 51 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-36, and 47-49 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-51 are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 3738

Upon review of the previous Office action and upon consultation with attorney of record Timothy Trop, the Examiner decided to withdraw the finality of the previous Office action and to substitute this Office action in place thereof.

Claims 50 and 51 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper No. 3.

This application contains claims 50 and 51 drawn to an invention nonelected with traverse in Paper No. 3. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Objections

Claim 13 is objected to because of the following informalities: In claim 13, on line 5, "said spring element" lacks antecedence (emphasis added). Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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Claims 12-17, 19-26, 28, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Parodi (EP 0646365).

Parodi anticipates the claim language wherein the sealing means (310) is a single wire stent which inherently has a different resiliency than that of the securing means because it is of a different form and shape; see the whole document especially Figures 6 and 19 as well as Col. 8, lines 4-23 and Col. 13, lines 6-66 of US Patent 5,578,071; the Examiner has referred to the equivalent of the European patent, that is, US Patent 5,578,071 instead of the European patent because the copy of the European patent in the file is incomplete.

With regard to claims 14 and 15, Applicant is referred to Figure 6.

With regard to claim 16, the Examiner posits that both stents of Parodi are inherently resilient to the extent required by the present claims. Additionally, some embodiments only require a stent on one end of the graft; see Figure 6.

With regard to claim 24 specifically, the Examiner posits that the common axis as claimed is the axial axis of the tube

Claims 32-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Vorwerk et al (US 5,562,724) wherein the second section as claimed is either of stents (15) or (16) of Vorwerk et al.

Claims 35 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Applicant's arguments with respect to the claim have been considered but are moot in view of the new ground(s) of rejection.

With regard to the foreign language references recited, the Examiner has considered all reference copies with respect to the present claims. If Applicant would like these references cited on any patent which may issue herein, he is respectfully requested to provide a PTO-1449 listing the foreign language references not previously considered.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Prebilic whose telephone number is (703) 308-2905. The examiner normally be reached on Monday-Thursday from 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (703) 308-2672. The fax phone number for this Technology Center is (703) 305-3580.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 3700 receptionist whose telephone number is (703) 308-0858.



Paul Prebilic
Primary Examiner
Art Unit 3738